

Service Date: December 29, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petition of)	UTILITY DIVISION
3 Rivers Telephone Cooperative, Inc. for)	
Designation as an Eligible Telecommunications)	DOCKET NO. D2003.2.23
Carrier in the Shelby, Montana Exchange)	ORDER NO. 6521a

FINAL ORDER

Introduction

3 Rivers Telephone Cooperative, Inc. (3 Rivers), petitioned the Public Service Commission (PSC or Commission) on February 18, 2003 for designation as an eligible telecommunications carrier (ETC) in the local exchange of Shelby, Montana.¹ The Commission noticed the filing on April 16, 2003 for intervention. The Montana Consumer Counsel (MCC) filed on May 12, 2003 to intervene. A procedural order (Order No. 6521) was issued November 26, 2003. No party submitted pre-filed testimony in this docket. The April 20, 2004, Notice of Public Hearing established a May 13, 2004 hearing date. A hearing was conducted as scheduled in Shelby, Montana. No party besides 3 Rivers appeared at the noticed hearing. 3 Rivers filed on May 20, 2004 responses to late-filed exhibit requests.

3 Rivers ETC Petition

In its petition 3 Rivers asserts that it has met all statutory criteria to be designated an ETC. 3 Rivers concludes that the designation is “mandatory” and should be approved on an expedited basis.² 3 Rivers notes that the incumbent, Qwest Communications, Inc.

¹ The application is pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 and §69-3-840, MCA.

² Given that Western Wireless filed for designation as an ETC in Shelby (D2003.1.14)

(Qwest), was previously designated an ETC in the Shelby exchange.³ 3 Rivers recites requirements including that the Commission shall designate more than one common carrier as an ETC for a designated service area served by a non-rural telephone company, provided that the applicant meets the ETC criteria.

3 Rivers details the nine criteria that the Federal Communications Commission (FCC) finds must be satisfied in order to designate a petitioning carrier as an ETC. These criteria include: voice grade access to the PSTN, local usage, dual tone multi-frequency signaling, single party service, toll limitation,⁴ and access to four services: emergency, operator, interexchange, and directory assistance services. In its filing, 3 Rivers asserts that the Commission's determination is limited to these nine criteria.⁵ 3 Rivers also agrees to advertise the availability of such services using media of general distribution.

3 Rivers asserts to have provided local exchange service in Shelby since February, 2001 and has an approved interconnection agreement by which it will exchange local traffic with Qwest (PSC Docket No. D2000.2.24, Order No.6249). 3 Rivers also asserts to have placed "extensive facilities" including a "Nortel DMS 10 switch" that covers a significant portion of the customers within the exchange area. 3 Rivers therefore anticipates a diminished reliance on resale. To provide facilities-based service 3 Rivers maintains personnel in Shelby and holds that it is in a position to immediately implement the "same" throughout the Shelby service area. 3 Rivers offers Shelby residents such advanced services as custom local access signaling services, custom calling, and DSL high-speed Internet. 3 Rivers asserts to have met all federal and

before 3 Rivers filed its petition to be designated an ETC in Shelby, 3 Rivers held that the two applications should be considered in the order they were filed. DR PSC-005(e).

³ 3 Rivers would receive \$10.67 per line in support. Late-filed exhibit PSC-002(b).

⁴ Consumer information on toll-limitation services is provided in 3 Rivers telephone directories; 3 Rivers asserts to be capable of providing toll blocking and toll control. DR PSC-003.

⁵ According to 3 Rivers the Commission's consideration is limited to these criteria. 3 Rivers reached this conclusion based upon the Federal-State Joint Board's July 10, 2002 Recommended Decision on universal service (FCC Docket No. 96-45).

state criteria for designation as an ETC and therefore requests that the PSC grant its petition.

Findings of Fact and Commission Decision

The Commission has previously granted petitions to designate competitive ETCs (CETCs) in Qwest's non-rural service areas. Those prior decisions do not impose constraints and are not a precedent for this 3 Rivers decision. No party opposed any of those prior ETC designations. The Commission's decision in this docket will not necessarily set a precedent for how the Commission may decide any future ETC petition. Each ETC petition for designation must be in the public interest and will be determined on its own merits.⁶ Once the Commission's rulemaking on ETC standards is complete those rules will largely guide the application, intervention, decision-making, and annual certification processes involving both past and prospective ETCs. In the following, the Commission will explain why it grants 3 Rivers ETC designation petition and identify the conditions upon which the petition is granted.

The Commission finds merit in granting 3 Rivers' petition, for a combination of reasons. First, 3 Rivers appears to have satisfied the minimal federal requirements that are set forth in § 214 of the 1996 Act. Whether 3 Rivers satisfies all relevant requirements will depend, in part, on its compliance with the additional conditions set forth in this order. Second, the Commission's rulemaking proceeding will establish additional public interest standards and requirements with which all ETCs must comply. 3 Rivers will have an opportunity, once those rules are established, to demonstrate its compliance. In this regard, consideration of whether 3 Rivers complies with those rules will not differ from how the Commission evaluates the ongoing compliance of other previously designated and prospectively designated ETCs. Third, the public interest standard appears, by construction of § 214 of the 1996 Act, less stringent for non-rural carriers than it is for rural carriers.⁷ The Commission also finds that a more rigorous

⁶ 3 Rivers also held that the same public interest criteria should apply to all ETC "designates" (DR PSC -010(b)).

⁷ 3 Rivers asserts that, unlike in a non-rural area, when an additional ETC is considered for designation in a rural area 4 additional criteria must be met prior to approval that

evaluation is called for in the case of ETC petitions in the areas served by rural carriers. The Commission's rules will establish appropriate additional requirements for rural and non-rural carriers. Last, the Commission finds that Qwest's apparent lack of concern in this docket suggests that 3 Rivers designation will not jeopardize Qwest's financial well-being. For these reasons the Commission finds that 3 Rivers may be designated an ETC for the Shelby wire center. 3 Rivers must, however, satisfy certain other requirements as discussed in the following findings.

Public Interest

The public interest requires of the Commission a thorough review of whether 3 Rivers complies with both the requirements set forth in § 214 of the 1996 Act and with any additional requirements that the Commission establishes in this order and later in any rules the Commission may adopt. The Commission has authority to establish such requirements and it will exercise that authority in this docket.⁸ These additional requirements are obligations with which 3 Rivers must comply on an ongoing basis. The Commission sets forth those requirements with which 3 Rivers must comply as a condition of receiving ETC status and will defer until the completion of the on-going ETC rulemaking any other obligations that will apply to all ETCs.

Coverage Obligation

In its petition, 3 Rivers seeks to be designated an ETC for Qwest's Shelby

include: 1) provision of equal access for calls placed to locations outside the petitioning carriers local calling area, 2) comparable service coverage to that which the ILEC provides, 3) comparable network capacity to that which the ILEC provides and 4) assurance that the rural ILEC's ability to offer service is not jeopardized. (DR PSC - 005(b))Because the FCC and, or, the Joint Board failed to establish these as public interest criteria 3 Rivers would "defer defining Public Interest to the FCC or under proper statutory authority, to the Montana PSC." (DR PSC -010)

⁸ In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserts: "We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance...We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate ETCs in both rural and non-rural carrier study areas under section 214(e) of the Act. The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas." (para 27, emphasis added)

exchange. Qwest's Shelby exchange includes the base rate area and, any abutting zonal areas and the suburban and locality rate areas that surround the base rate area of the Shelby wire center. As 3 Rivers has the means to serve customers in the Shelby wire center, either on a facility basis, by means of UNEs or via resell, there appears no concern about 3 Rivers apparent ability to serve any or all lines in the Shelby wire center. Therefore, the Commission is not concerned with 3 Rivers' ability to serve all customers in the entire Shelby wire center with the services that are supported and required to be provided.⁹ If 3 Rivers were to change the means by which it intends to serve customers to, for example, internet telephony, and in turn seek federal universal service funding, then 3 Rivers must first advise the Commission of such intent.

The Commission finds that 3 Rivers must by means of its own resources serve all reasonable requests for wireline service at residences and businesses in each wire center. 3 Rivers may choose the means by which it fulfills this obligation but it shall be, in the first instance, 3 Rivers responsibility. The Commission also understands that 3 Rivers customers will be able to exchange local traffic with other local exchange providers in the Shelby wire center.¹⁰

Service Quality Monitoring

The Commission will monitor 3 Rivers ability to provide service. 3 Rivers must report to the Commission requests for wireline service that it is unable to satisfy. 3 Rivers must report the number of unsatisfied requests regardless of how those requests were communicated to 3 Rivers (e.g., voice, email, or letter). The Commission requires that these reports detail by location in the Shelby wire center 3 Rivers ability (and

⁹ 3 Rivers explained that it neither resells lines nor does it lease UNEs from Qwest to provide service; 3 Rivers could in conjunction with Qwest's plant serve all customers. (DR PSC -002; DR PSC -011(c))

¹⁰ 3 Rivers objected to data requests inquiring into how it will exchange traffic with Western Wireless in the Shelby exchange. (DR PSC -004(e)) 3 Rivers later explained that it currently exchanges traffic with Western Wireless in Shelby. (DR PSC -009(a)) In a late-filed exhibit, 3 Rivers explained that it has a "verbal" interconnection agreement to facilitate the exchange of traffic between Western Wireless and 3 Rivers in Shelby. The "verbal" agreement keys off of an interconnection agreement that 3 Rivers has with Western Wireless for the "Big Sky, Montana exchanges." (LFE PSC-001)

inability) to serve customers. The reports must provide a detailed description of why customer requests for service could not be satisfied. 3 Rivers must file such reports on a quarterly basis for as long as 3 Rivers is designated an ETC in the Shelby wire center.

3 Rivers must also document and report to the Commission on the customer complaints that it receives. For the Shelby wire center, 3 Rivers must record the complaints that it receives from customers, identify the nature of the complaint (e.g., poor transmission, dropped calls, busy signals) and identify the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses within each wire center. If repeat complaints are received, then a record of such repeat complaints must be maintained. The results of the complaint records must be supplied to the Commission on a quarterly basis.

Federal Universal Service Fund

The Commission finds that in conjunction with being designated an ETC, 3 Rivers must report to the Commission the federal universal service funds including Lifeline and Link Up credits that it receives.¹¹ The reports must be filed quarterly for the Shelby wire center.

Service Package

As long as 3 Rivers is designated an ETC in the Shelby wire center it must have on file with the Commission a copy of each rate plan that it offers and for which it may receive federal universal service support.¹² Each plan must include the rates, terms and conditions of service.

Lifeline

Upon compliance with the requirements in this order the Commission will certify to the FCC and USAC (Universal Service Administration Company) 3 Rivers demonstration that its Lifeline plan complies with the FCC's rules.

¹¹ Once designated as an ETC 3 Rivers will offer Lifeline services for \$9.15/month; Link-up rate offerings vary. (DR PSC -001(d))

¹² 3 Rivers will offer three rate plans in Shelby: Residential (\$15.55), Business (\$32.65) and Resale (\$35.00). DR PSC -013(a). Customer deposits are \$100 and are refunded after one year of satisfactory service with 6% interest (id). (DR PSC -013(a))

Fund Size and Funded Lines

The Commission is concerned about the size of the federal universal service fund. The FCC also has expressed heightened concern about the size of the federal fund.¹³ There is a real risk that if the federal fund size continues along its recent growth path, that legislation could be enacted to limit the fund's size. Any such legislation could damage the ability of carriers to operate, maintain and expand networks that serve to achieve the universal service principles set forth in §254(b). These concerns are, however, being addressed at the Federal level by both the FCC and the Federal-State Joint Board.

Network Requirements and Service Quality Standards

The Commission has statutory authority to require 3 Rivers as a condition of receiving ETC designation to comply with the requirements that the Commission imposes in this order and in rules. The Commission's ETC rules will address in addition to those requirements and standards established in this order other standards that will apply to ETCs. The Commission finds that all ETCs must comply with the Commission's ETC rules, once adopted. The Federal-State Joint Board's Recommended Decision (FCC 04J-1, CC Docket No. 96.45, Released February 27, 2004) also provides guidelines for additional ETC eligibility requirements. These guidelines include the following five items (Recommended Decision, pp. 10-16): 1) adequate financial resources; 2) commitment and ability to provide the supported services; 3) ability to remain functional in emergencies; 4) consumer protection; and 5) minimum local usage. The Commission intends to fully consider these guidelines in its ongoing ETC rulemaking proceeding.

¹³ In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserts: "Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs... We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future." (para. 31, emphasis added)

Conclusions of Law

The Commission has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. *47 U.S.C. § 214(e)(2); § 69-8-840, MCA.*

Consideration of the public interest applies in all applications for designation as an eligible telecommunications carrier. *47 U.S.C. § 214(e)(2), ("[u]pon request and consistent with the public interest, convenience, and necessity" a state commission may designate additional eligible telecommunications carriers).* The Commission has considered the public interest in this proceeding.

The Commission has proposed, and is considering the adoption of, rules governing the designation of eligible telecommunications carriers and the maintenance of status as an eligible telecommunications carrier. *See PSC Docket No. L-04.07.5-RUL (hearing on these proposed rules has been held).* The rules, as adopted, will apply to all eligible telecommunications carriers in Montana, including 3 Rivers. The rules may modify or replace one or more of the terms and conditions in this order.

All pending motions, objections, and arguments not specifically acted upon in this Final Order are denied, to the extent denial is consistent with this Final Order.

ORDER

It is hereby ordered that the application of 3 Rivers for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions included in this order.

Done and dated this 21st day of December, 2004, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.